

12. Інструкція з організації взаємодії підрозділів Експертної служби МВС із територіальними органами з надання сервісних послуг МВС : затв. Наказом МВС України від 18 січня 2016 року № 28. URL: <http://zakon2.rada.gov.ua/laws/show/z0204-16>.

13. Деякі питання надання підрозділами Міністерства внутрішніх справ, Національної поліції та Державної міграційної служби платних послуг : Постанова Кабінету Міністрів України від 4 червня 2007 року № 795. URL: <https://zakon.rada.gov.ua/laws/show/795-2007-%D0%BF>.

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15. Порядок державної реєстрації (перереєстрації), зняття з обліку автомобілів, автобусів, а також самохідних машин, сконструйованих на шасі автомобілів, мотоциклів усіх типів, марок і моделей, причепів, напівпричепів, мотоколясок, інших прирівняних до них транспортних засобів та мопедів : затв. Постановою Кабінету Міністрів України від 7 вересня 1998 року № 1388 (назва Постанови у редакції Постанови Кабінету Міністрів України від 23 грудня 2009 року № 1371). URL: <http://zakon5.rada.gov.ua/laws/show/1388-98-п>.

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#### CIVIL CLAIM IN CRIMINAL PROCEEDINGS REGARDING APPLICATION OF MEASURES OF THE EDUCATIONAL AND MEDICAL NATURE: THE PROBLEMS OF THEORY AND PRACTICE

The article is devoted to the study of the problems of theory and practice of presenting a civil claim in criminal proceedings regarding the use of compulsory measures of educational and medical nature. For this purpose the theoretical approaches and opportunities of solving law enforcement issues as for providing a civil claim in certain categories of criminal proceedings are analyzed.

**Key words:** *criminal proceedings, civil claim, compulsory measures of medical nature, minors, compulsory measures of educational nature.*

Стаття присвячена дослідженню проблем теорії та практики пред'явлення цивільного позову у кримінальному провадженні стосовно застосування примусових заходів виховного та медичного характеру. З цією метою проаналізовано теоретичні підходи та можливості вирішення питань правозастосування норм щодо забезпечення цивільного позову в певних категоріях кримінальних проваджень.

**Ключові слова:** *кримінальне провадження, цивільний позов, примусові заходи медичного характеру, неповнолітні, примусові заходи виховного характеру.*



Статья посвящена исследованию проблем теории и практики предъявления гражданского иска в уголовном производстве по применению принудительных мер воспитательного и медицинского характера. С этой целью проанализированы теоретические подходы и возможности решения вопросов правоприменения норм об обеспечении гражданского иска в отдельных категориях уголовных производств.

**Ключевые слова:** уголовное производство, гражданский иск, принудительные меры медицинского характера, несовершеннолетние, принудительные меры воспитательного характера.

**Introduction.** Nowadays, the reimbursement of damage caused by socially dangerous acts in the theory and practice of the criminal process is extremely relevant, especially in terms of the use of compulsory measures of educational and medical nature, since this problem has not been sufficiently investigated in scientific circles. The relevancy of the topic's study is conditioned in particular by the fact that filing a civil claim in a criminal proceeding is the most effective legislative means for obtaining a corresponding reimbursement. The problem of reimbursement for harm in criminal proceedings in connection with the adoption of the new Criminal Procedural Code of Ukraine (hereinafter referred to as the CPC of Ukraine) was particularly urgent, since the investigative institution of the criminal process was radically improved by the legislator. Due to the relevant changes, the problematic issues that need to be resolved at the legislative level still remain.

**Analysis of recent research and publications.** The civil claim in the criminal proceedings before the adoption of the new CPC of Ukraine is the topic of the works by V.T. Nor and V.Ya. Ponarin, M.I. Goshovskiy, O.P. Kuchinska, S.V. Narizhnyi, A.M. Erdelyevskiy, V.M. Savytskyi, S.I. Shimon, M.P. Sheshukov, V.Ye. Yurchenko. However, the conclusions obtained by the above-mentioned scientists are not always consistent, and the practice of law enforcement posed a much wider range of problem issues for solving them with the help of jurisprudence. Currently, we especially highlight the works of such scientists as O.A. Bortman, M.M. Govorukha, E.V. Videnko, A. M. Stebelev, A.V. Litvinova.

**Setting objectives.** To analyze the problem issues of the theory and practice of civil claim in criminal proceedings regarding the use of compulsory measures of educational and medical nature.

**Study results.** The reform of domestic criminal procedural legislation is due to the need to bring it in line with international standards on human and civil rights [1, p. 85]. The same applies to the protection of victims of criminal offenses. Thus, in particular, the International Covenant on Civil and Political Rights obliges the state to provide an effective remedy to any person in cases of violation of his rights and freedoms. The right to protection for any person who needs it is provided by the state, its competent judicial, administrative or legislative bodies [2]. In addition to the above-mentioned Covenant, the victim's right to reimbursement for damage caused by a crime is also provided for by a special European Convention on the Reimbursement of Victims of Violent Crimes [3].

In addition to the aforementioned international legal acts, the issue of restoring the rights of victims of criminal offenses is regulated at the national level. In particular, the Concept for the protection of the legal rights and interests of victims of crimes, approved by Decree of the President of Ukraine dated 28.12.2004 No. 1560/2004, stipulates the necessity of developing new and improving the current legislation on the protection of victims' legal rights and interests [4].

Chapter 9 of the current CPC of Ukraine is entitled "Reimbursement (Compensation) of Damage in Criminal Proceedings, Civil Claim" [5]. Although it consists of only four articles, its application is extremely voluminous, since its application refers not only to criminal procedural law institutions, but also to other material and procedural branches of law, in particular civil and civil procedural law.

Civil claim in criminal proceedings is directly regulated by the provisions of Art. 128 of the CPC of Ukraine, according to which a person who has suffered property and/or moral damage



by a criminal offense or other socially dangerous act has the right during the criminal proceedings before the trial to make a civil claim against a suspect, accused person or a natural or legal person, which by law has civil liability for damage caused by acts of a suspect, accused or insane person who committed a socially dangerous act [5].

Prior to directly determining the peculiarities of the use of a civil claim regarding the use of compulsory measures of a medical or educational nature, it is necessary to define the concept of a civil claim in a criminal proceeding.

A civil claim in criminal proceedings is defined by S.V. Kivalov as the demand of a natural or legal person who has been harmed by a criminal offense or other socially dangerous act, their representative, legal representative, prosecutor against a suspect, accused person or to a natural or legal person who by law bears the civil liability for damage caused by acts of a suspect, accused or insane person who committed a socially dangerous act, on the reimbursement of this damage, claimed to the bodies carrying out criminal proceedings, and which is awarded by the court in the framework of criminal proceedings [6, p. 334].

In her turn, L.D. Udalova believes that a civil claim in criminal proceedings is a claim of the victim who suffered material (property) damage from the crime, their representative or in the interests of the prosecutor against a suspect, accused or those who carry property responsibility for their actions, on the reimbursement of this damage, which was claimed to the body of the pre-trial investigation, investigator, prosecutor, judge (court) in a criminal offense before the trial begins [7, p. 136].

It is necessary to agree with the opinion of M.M. Govorukha, who believes that the civil claim in criminal proceedings is a sub-institution of the legal status of the victim, and the sub-institution of the civil claim in criminal proceedings contains norms regulating the damage caused by a criminal offense, which is also an independent sub-institution.

Therefore, it should be noted that the criminal procedural rules governing the civil claim in criminal proceedings together with the consideration of the subject matter and the method of legal regulation are an interdisciplinary (mixed) institution of civil claim in criminal proceedings and belongs to the criminal procedural branch of law. However, this institution, of course, is based not only on the rules of criminal proceedings, but it contains a list of standards in such areas as civil law, criminal law, civil process, etc. [8, p. 58].

It is worth noting that in a criminal proceeding a civil claim can be made for the reimbursement of property and/or moral damage. At the same time, the victim who is a legal entity, due to its legal status can make a civil claim for reimbursement for property damage only (Art. 61 of the CPC of Ukraine).

It should be emphasized that such civil action will be considered and resolved during the criminal proceedings and depending on its results. It should be noted that the CCP of Ukraine as of 1960 did not provide for the possibility of making a civil claim in criminal cases on the use of compulsory measures of an educational or medical nature, but only in cases of crimes.

In its turn, the CPC of Ukraine as of 2012 has dramatically expanded the scope of the abovementioned method of protection of violated property and personal rights and legitimate interests of the victims in criminal proceedings [9, p. 279]. Therefore, having defined the content of the concept of a civil claim in a criminal proceeding, it is necessary to outline the problems of its use when applying compulsory measures of the medical and educational nature, especially with regard to minors, and to determine the range of persons against which a civil claim can be made in criminal proceedings.

In accordance with Part 1 of Art. 62 of the CPC of Ukraine, a civil defendant in a criminal proceeding may be a natural or legal person who, by virtue of law, bears civil liability for damage caused by criminal acts (inaction) of a suspect, accused or insane person who committed a socially dangerous act, and against which a civil claim was made in accordance with the procedure established by the CPC of Ukraine [5].

It should be noted that in comparison with the CPC as of 1960, the legislator has expanded the range of persons who may be civil defendants, adding to the list of persons who bear civil



liability for damage caused by acts of the insane person. Thus, with the adoption of the new CPC of Ukraine, a civil claim can also be made in cases on the application of compulsory measures of the medical nature in order to reimburse for the damage caused by socially dangerous acts of an insane person. In our opinion, this is a significant progressive novelty of the criminal procedural legislation as a whole.

However, from the systematic analysis of the norms of the CPC of Ukraine it can be seen that the legislator does not provide for the possibility of a civil claim and, therefore, reimbursement for damage caused by socially dangerous acts committed by minors aged from 11 to the age from which criminal liability may arise (14 or 16 years old) [10, p. 15].

Thus, Part 1 of Art. 498 of the CPC of Ukraine provides that criminal proceedings concerning the use of compulsory measures of educational nature shall be carried out as a result of the commission by a person who, after reaching the age of 11 years old, until reaching the age from which criminal liability may occur, of a socially dangerous act that has the signs of an act prescribed by the law of Ukraine on criminal liability.

In terms of Part 1 of Art. 128 of the CPC of Ukraine, a civil claim can be made against a suspect, accused or a natural or legal person who by law bears civil liability for damage caused by acts of a suspect, accused or insane person who committed a socially dangerous act. In the context of the foregoing, it should be noted that a civil claim may be made in criminal proceedings regarding the use of compulsory measures of educational nature only in respect of the persons who have already reached the age of criminal liability, since such persons (aged from 14 to 16) may be suspected/accused in a certain category of cases, since they are the subjects of a criminal offense. In turn, the possibility of making a civil claim in criminal proceedings regarding the use of educational measures in respect of minors under the age from which the criminal liability arises (from 11 years to 14/16 years) is not provided for by the legislator [11].

It is worth pointing out that according to Part 1 of Art. 1178 of the Civil Code of Ukraine (hereinafter referred to as the CC of Ukraine), the damage made by a minor (under the age of fourteen years old) is reimbursed by their parents (adopters) or guardian or other natural person who, on legal grounds, carries out the education of a minor person, if they fail to prove that the damage is not a consequence of mistreatment or evasion from the upbringing and supervision of that minor.

Also, according to Art. 1179 of the Civil Code of Ukraine, a minor (at the age of fourteen to eighteen years old) is responsible for the damage made independently on the general grounds. In the absence of the minor's property sufficient to reimburse for damage, this damage shall be reimbursed in the part that is not sufficient, or in full by their parents (adopters) or guardian, unless they prove that the damage was not caused by their fault. If the minor was in an institution that carries out the functions of a guardian under the law, this institution is obliged to reimburse the damage in the part that is not sufficient or in full, unless it proves that the damage was not caused by its fault [12].

Thus, the aforementioned norms of civil law show that in any case, either the person who committed the criminal offense, or the parents (adopters) of a minor, and in the cases provided for in Part 2 of Art. 1179 of the CC of Ukraine, an institution which, according to law, carries out the functions of the guardian, who caused the damage, reimburse the losses caused by unlawful actions by a person aged 11 to 14 (16) years old.

Analyzing the aforementioned provisions of the CPC of Ukraine and the CC of Ukraine, we can state that the legislator did not foresee the possibility of making a civil claim in criminal proceedings against persons who bear civil liability for the actions of minors, i.e., it is not possible to make a civil claim in the framework of criminal proceedings against the parents (adopters) of a minor/young person.

**Conclusions.** After analyzing the problematic issues of making a civil claim in criminal proceedings, a conflict situation arises when, in fact, the criminal procedural norms do not regulate the issues of reimbursement for losses caused by a person aged 11 to 14 (16) years old, who is not the subject of a crime, despite the fact that the norms of the CPC of Ukraine provide for



the application to the minors from 11 years of compulsory measures of educational nature, the legislator did not foresee the possibility of making a civil claim in criminal proceedings against the persons who bear civil liability for the actions of minors, namely, the parents (adopters) of a minor (young person) and an institution that under the law carries out functions of a guardian in respect of a minor (young person).

In this regard, in our opinion, it is necessary to amend the provisions of Art. 128 of the CPC of Ukraine and include in the list of persons who may be subjected to a civil claim in criminal proceedings, which by virtue of the civil liability for damage caused by socially dangerous acts of minors/young persons provided for in Art. 1178, 1179 of the CC of Ukraine and set it forth as follows: a person who has suffered property and/or moral damage by a criminal offense or other socially dangerous act has the right during the criminal proceedings before the trial to make a civil claim against a suspect, accused or a natural/legal person who according to the law bears civil liability for damage caused by acts of a suspect, accused or insane person who committed a socially dangerous act, including a minor, a civil claim for damage made by a minor (who has not reached the age of fourteen years old) can be made against their parents, guardian or other physical person who, on legal grounds, carries out the education of such minor.

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